

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9984 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

( No. 1 to 5 NO)

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RASIKLAL DURLABHJI SHETH

Versus

COMPETANT AUTHORITY AND DEPUTYCOLLECTOR

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Appearance:

MR SURESH M SHAH for Petitioner

MR TH SOMPURA, LD.GOV.T.PLEADER FOR RESPONDENTS

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 03/02/97

ORAL JUDGEMENT

Placing reliance upon the Supreme Court pronouncement in Smt. Darothi Clare Parreira and others, Appellants vs. State of Maharashtra and others, Respondents, A I R 1996, S.C. Pg. 2553 and upon the pronouncement of this Court in Dahyabhai Manorbhai Patel v. The Competent Authority & Addl. Collector, Unit No.2, Vadodara & Anr., 28(2) G L R pg. 1396, learned

counsel Mr. S.M. Shah for the petitioner urges that, the present petition requires to be allowed; and the matter requires to be remanded to the ULC Tribunal for a fresh decision of the appeal on merits.

The Appeal No. Rajkot-11/93 came to be decided by the Urban Land Tribunal under the orders dated July 05, 1996. The appeal has been dismissed on the ground that the matter has progressed up to Section 10(5) of the Urban Land (Ceiling & Regulation) Act, 1976, and that the land in question has already vested in the Government and therefore, even if the petitioner has got an arguable case on merits, the appeal was required to be dismissed on that count alone.

When the reference is made to the Supreme Court decision in case of Smt. Darothi Clare Parreira and others (supra) it is clear that the excess vacant land stands vested in the State free from all encumbrances but subject to the decision in appeal if any filed in accordance with law. Ld. Single Judge of this Court in case of Dahyabhai Manorbhai Patel (supra) has said that, merely because a Notification under section 10(5) of the Urban Land (Ceiling & Regulation) Act 1976, vesting the land in the Government has been published, it does not follow that the right of the appeal is lost.

These two decisions would go to show that the Ld. Tribunal was at a manifest error in saying that, as the matter has progressed up to Section 10(5) of the ULC Act 1976, the appeal which was competent under the law was not required to be heard & decided on merits. The present petition therefore requires to be allowed and the same is hereby accordingly allowed. The impugned orders are hereby quashed and set aside and the appeal is remanded to Ld. Tribunal for the decision, according to law and on merits, after affording a reasonable opportunity of being heard to the parties. Rule is made absolute to the said extent, with no order as to cost.

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